UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/SR.39
19 April 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 April 2002, at 10 a.m.

Chairperson: Mr. JAKUBOWSKI (Poland)

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GE.02-12756 (E) 170402 190402

The meeting was called to order at 10.10 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 8) (continued) (E/CN.4/2002/L.16)

Draft resolution on the question of the violation of human rights in the occupied Arab territories, including Palestine (E/CN.4/2002/L.16)

1. Mr. ADIYIA (Secretariat) said that, although paragraph 23 of the draft resolution requested the Special Rapporteur on the situation of human rights in the Palestinian territory occupied by Israel since 1967 to follow up the implementation of the recommendations made in the reports of the High Commissioner and of the Human Rights Inquiry Commission, such matters were considered to be part of the Special Rapporteur's ongoing activities, provision for which had been made in the programme budget for 2002-2003. Approval of the draft resolution would thus imply no additional budget appropriation.

2. Ms. GERVAIS-VIDRICAIRE (Canada), speaking in explanation of vote before the voting, said that her delegation was deeply concerned about the human rights situation in the Palestinian territories but the text of the draft resolution contained numerous examples of inflammatory language which contributed nothing to efforts to ensure that human rights were fully respected by all sides. The singling out of one party, especially in the current circumstances, did not contribute to efforts to put an end to the conflict or to bring the parties closer to peace.

3. The failure of the draft resolution to condemn all acts of terrorism, particularly in the context of recent suicide bombings targeting civilians, was a serious oversight which rendered it fundamentally unacceptable; there could be no justification for terrorist acts. Furthermore, the draft resolution contained a long operative paragraph on Israeli settlements (para. 6), an issue on which there was already a separate resolution, which her delegation had supported. Consequently, her delegation would vote against the draft resolution since it did not provide a balanced assessment of the situation.

4. Mr. LEWALTER (Germany), having expressed deep concern at the serious human rights and humanitarian situation in the occupied territories and the continuing violence which had resulted in a high number of deaths and injuries, mostly among Palestinians, said he was particularly worried by the recent escalation of violence, especially the large-scale incursion by the Israel Defence Forces (IDF) into Palestinian-ruled territory. His delegation reiterated its call for the immediate withdrawal of the Israeli army from the occupied territories and for an immediate cessation of all acts of violence, including acts of terror, provocation, incitement and destruction. It also urged the immediate implementation of Security Council resolutions 1397 (2002), 1402 (2002) and 1403 (2002).

5. While his delegation supported many of the concerns expressed in the draft resolution, it regretted that it was unable to support it because the text contained language that might be interpreted as an endorsement of violence. Furthermore, there was no condemnation of terrorist violence and the draft resolution did not reflect his delegation's concerns about the human rights record of the Palestinian Authority.

6. He acknowledged the efforts of the main sponsors to accommodate those concerns and reach a consensus, regretted that a final agreement could not be reached, and reiterated his delegation's strong commitment to the cause of human rights in Palestine.

7. Mr. PEREZ-VILLANUEVA y TOVAR (Spain) said that the crisis of violence and the massive violations of human rights and international humanitarian law in the occupied territories had convinced his delegation to support the draft resolution. He regretted that the sponsors had not taken into account all the concerns expressed by the European Union and that the current text consequently did not enjoy widespread support, which would have sent a strong message to the parties concerned that the entire world demanded an end to the violence.

8. The draft resolution did not in places accurately reflect the situation on the ground and was not technically correct. It was regrettable that there were no references to the suffering inflicted on the other party to the conflict; nor did it call on all parties to respect human rights unconditionally. He hoped that those deficiencies and errors would not affect the credibility of the draft resolution or prevent it from contributing to an improvement in the situation.

9. Mr. KESSEDJIAN (France) said that the current human rights catastrophe in the occupied territories justified support for the draft resolution and he thanked the sponsors for their efforts to draft a consensus text. His delegation denounced violence and terrorism unequivocally and noted that Security Council resolution 1397 (2002) provided a framework for a political solution to the crisis. It urged a return to dialogue with a view to achieving a just and lasting peace and hoped that the draft resolution would help to improve the situation for those who had to live every day in fear of violence and terror.

10. Mr. ARENALES FORNO (Guatemala) said that, although both the Government of Israel and the Palestinian Authority were responsible for protecting human rights in the Palestinian territories, the primary responsibility rested with the Palestinian Authority, which had been unable or unwilling to meet its obligations. It was unjust to hold Israel responsible, especially when it was defending itself against acts which the Palestinian Authority should have prevented.

11. The resolution contained no mention of the Palestinian Authority or its responsibilities in the territories under its jurisdiction. It also used unprecedentedly inflammatory language which could only inflame the situation and contributed nothing to a renewal of negotiations. His delegation would therefore vote against the draft resolution.

12. Mr. NEGROTTO CAMBIASO (Italy) said he shared the concerns of the international community about the Middle East situation and stressed that, even in a fight against occupation and for self-determination, international human rights standards must be observed. He deplored the fact that Security Council resolutions 1397 (2002), 1402 (2002) and 1403 (2002) had not been implemented and stressed that no one was above international law.

13. The draft resolution expressed legitimate concerns about the situation in the Middle East and its possible consequences for the region. His own delegation, which had always supported the right to self-determination, was particularly concerned about the situation in the Jenin refugee camp and urged the Government of Israel to respond to the call of the international community.

14. Unfortunately, the language of the draft resolution did not fairly reflect the situation or condemn all human rights violations. It did not express support, either, for the mission of the United States Secretary of State. His delegation therefore felt compelled to abstain.

15. Ms. GLOVER (United Kingdom) said that her Government had made known to the parties its deep concern at the extremely serious human rights and humanitarian situation in the occupied territories and at the continuing violence, which had resulted in a large number of deaths and injuries, mostly among Palestinians. It was particularly concerned at the recent escalation of violence, especially the large-scale incursion by the IDF into Palestinian-ruled territory. It reiterated its call for the immediate withdrawal of the Israeli army, for a ceasefire and for a cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction. It also called for immediate implementation of Security Council resolutions 1397 (2002), 1402 (2002) and 1403 (2002).

16. Although her delegation agreed with many of the concerns expressed in the draft resolution, the text contained language which might be interpreted as endorsing violence and condoning terrorism. The text was not a balanced one; it contained language inappropriate to the Commission and did not refer to the responsibilities of the Palestinian Authority, express clear regret for the civilian casualties on both sides or condemn terrorism. She thus questioned the draft resolution's ability to have a positive effect on the situation and expressed full support for the peace efforts of the European Union, the United Nations, the Russian Federation and, in particular, the United States Secretary of State.

17. Although she acknowledged the efforts of the main sponsors to accommodate some of her delegation's concerns, she regretted that a final agreement could not be achieved. She nevertheless reiterated her delegation's strong commitment to the cause of human rights in the occupied territories.

18. Mr. AKRAM (Pakistan) said that the sponsors of the draft resolution had always remained open to suggestions and that negotiations on its text had been conducted in good faith on the part of all parties. The fact that full agreement on the text had not been possible did not reflect any lack of effort, and he rejected any implication that the sponsors had not done their utmost to achieve a consensus.

19. At the request of the representative of Canada, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Brazil, Chile, China, Costa Rica, Cuba, Democratic Republic of the Congo, Ecuador, France, India, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierre Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, Venezuela, Viet Nam, Zambia.

Against: Canada, Czech Republic, Germany, Guatemala, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Burundi, Cameroon, Croatia, Italy, Japan, Poland, Uruguay.

20. The draft resolution was adopted by 40 votes to 5, with 7 abstentions.

21. Mr. MAUTNER-MARKHOF (Austria) said that his delegation had supported the resolution because of its concern at the continuing violence in the occupied territories but it had grave concerns regarding some of the language in the text, particularly in paragraphs 3, 7, 13 and 14. In that connection, he recalled the statement of the Secretary-General which had stressed the need for both parties to protect human rights and observe international humanitarian law as being essential for progress towards a just and comprehensive settlement.

22. Mr. MOLANDER (Sweden) said that his delegation had supported the resolution as an expression of concern at the tragic and urgent situation in the Middle East. The sponsors had, to some extent, taken into account the views expressed by various delegations but the text still contained language which was, to say the least, unfortunate. He regretted that the sponsors had not been prepared to accept further improvements in the text, such as the introduction of a condemnation of all acts of terror and terrorism.

23. Mr. SABHARWAL (India) said that both Israel and Palestine had the right to live within secure and internationally recognized boundaries. He deplored the tragic situation in the Middle East and the loss of innocent life, which could not be justified. He wished to point out that the Vienna Declaration and Programme of Action recognized the right of peoples to take only legitimate action to realize their right of self-determination. His delegation, which supported Security Council resolutions 1397 (2002), 1402 (2002) and 1403 (2002) called on all parties to exercise restraint with a view to restoring confidence and preparing the way for negotiations. The Commission should bear those goals in mind when considering any further action.

24. Mr. MENDOÇA E MOURA (Portugal) said that his delegation had supported the resolution because of its extreme concern at the human rights situation and the increasing violence in the occupied territories, particularly the armed Israeli incursion into Palestinian controlled territory. It nevertheless disagreed with some of the language and emphasis in the text and regretted that the sponsors had not been more open to suggested changes.

25. His delegation condemned all violence including suicide bombings and, recalling the statement by the Secretary-General, said that the killing of innocent civilians violated humanitarian law and only undermined the cause of those responsible.

26. Mr. NOIRFALISSE (Belgium) said that, given the gravity of the situation in the Middle East, his delegation had felt compelled to support the resolution despite some inadequacies in its text. The vote should be seen as a rejection of violence, a call for respect for international law and Security Council resolutions and an appeal for a return to peace in the region.

27. Mr. SALLOUM (Syrian Arab Republic) said that the large majority in favour of the resolution reflected the seriousness of the situation in the occupied territories and the need for Israel to put an end to its flagrant violation of human rights, including its policy of assassination and its siege of the Palestinian Authority. Even those delegations which had abstained or voted against the resolution had, in their explanation of vote, expressed their concern about the grave violations by Israel. Israel still refused to allow access by international humanitarian organizations and he called for a full implementation of the resolution and an immediate mission to the region by the High Commissioner.

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION (agenda item 6) (continued) (E/CN.4/2002/L.9)

Draft resolution on combating defamation of religions (E/CN.4/2002/L.9)

28. Mr. LEBAKINE (Secretary of the Commission) said that the representative of Thailand had become a sponsor of the draft resolution.

29. Mr. AKRAM (Pakistan) said he had two minor changes to make to the text of the draft resolution. In the ninth preambular paragraph, the words "Arabs and" at the end of the paragraph should be deleted, and, in paragraph 7, the words "of Muslims and Arabs" should be deleted and replaced by "in particular of Muslims".

30. Mr. PEREZ-VILLANUEVA y TOVAR (Spain), speaking in explanation of vote before the voting on behalf of the States members of the European Union and associated States that were members of the Commission (a statement agreed upon by all the members of the European Union and by many of the associated States) said that, for the third time, the Commission had before it a draft resolution on the subject of defamation of religions submitted by the Organization of the Islamic Conference (OIC), and, once again, the Union had serious difficulties regarding it. The questions raised in it were taken up in a balanced way in other resolutions under various agenda items.

31. There was no reason to raise the issue of defamation of religions separately, particularly in the way that the issue was presented in the draft resolution, which did not stress the rights of individuals, irrespective of their religion or belief, and continued to give pre-eminence to one religion and to certain communities defined by their religion. In fact, followers of all beliefs could be - and were - victims of human rights violations and stereotyping. Singling out one group only distracted from the ultimate objective of promoting respect for all religions or beliefs. The draft resolution also failed to take into account the right not to have a religion or belief or to express individual dissent.

32. The Union was particularly concerned at the insistence on asking special protection for one specific religion. It believed in tolerance, freedom of expression, freedom of religion or belief and a dialogue among civilizations. The OIC continued to insist, however, on submitting

a draft resolution which was selective and did not contribute to the desired consensus regarding the issues of racism, discrimination and religious intolerance. The Union, which had in vain requested during informal consultations that the text be withdrawn so that a common approach could be sought would vote against the draft resolution, and asked that the vote be a recorded one.

33. Mr. SABHARWAL (India), having recalled his Government's attachment to equality, non-discrimination and religious tolerance, said that it opposed defamation of any religion, including Islam, as well as attempts to imply that Islam condoned terrorism or human rights violations. At the same time, it opposed distortions of religious values with a view to justifying violence or terrorism.

34. The issue of defamation of religions was best addressed under the agenda item on civil and political rights and his delegation had, in the past, resisted attempts to include religious discrimination under the item on racism. The meaning of the words "non-Muslim countries" in the ninth preambular paragraph was not clear: there were countries with large Muslim populations that had a secular political system and virtually all countries had Muslims elements in their populations. Defamation and negative stereotyping were problems shared by all religions and any resolution in that regard should give equal focus to the problems faced by all religions. It was also necessary to protect all minorities, wherever they might be and whatever their religion. Given those factors, his delegation would abstain from voting on the draft resolution.

35. Mr. ARENALES FORNO (Guatemala), said that his Government condemned and rejected the defamation of any religion whose principles and practices were compatible with respect for human rights and fundamental freedoms. It was the responsibility of religious leaders to maintain that compatibility and it was regrettable that some of them had assumed a political role and tolerated, justified and promoted action that violated the rights and freedoms of innocent people. If a religion was linked to acts of terrorism and human rights violations, it was the fault of such leaders.

36. It was encouraging that some religious leaders were starting to condemn, as an interpretation contrary to their principles, such terrorist acts. In order to be effective, however, such condemnations had to be widely disseminated and followed up by action. The Catholic Church had acknowledged and remedied behaviour both in the present and in the past incompatible with human rights; its hierarchy had taken decisive action, without recourse to considerations regarding discrimination or defamation.

37. The subject addressed in the draft resolution would be more appropriately taken up under agenda item 11. His delegation could not vote for the draft resolution since it failed to mention the main responsibility of religious and political leaders, inappropriately linked religion with racial considerations and failed to address key aspects of the freedom of religion and equality before the law without discrimination on grounds of religious belief.

38. Ms. GERVAIS-VIDRICAIRE (Canada), said that her delegation was acutely aware that religious intolerance was a matter of great concern to all. Promoting respect for cultural, linguistic, ethnic and religious diversity was an important element of the human rights work of

her country. However, her delegation could not vote in favour of the draft resolution because it mixed questions of racism and religious intolerance in such a way that did not promote greater understanding of the relationship between the two issues, but rather confused them. Moreover, the draft resolution did not adequately address the matter of the link between diversity and the fight against racism.

39. Her delegation was concerned that the draft resolution stressed the protection of one religion above all others. In fact, the concept of protecting religions themselves, rather than the adherents of religions, continued to be a problematic one. The changes made to the latest draft resolution on the topic did not take into account the concerns expressed by her delegation at the previous session, and merely confirmed that there was still a divergence of views as to its final objective.

40. The CHAIRPERSON said that the draft resolution had no budgetary implications.

41. At the request of the representative of Spain, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Bahrain, Brazil, Cameroon, China, Cuba, Democratic Republic of the Congo, Ecuador, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sudan, Syrian Arab Republic, Thailand, Togo, Uganda, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Austria, Belgium, Canada, Croatia, Czech Republic, France, Germany, Guatemala, Italy, Japan, Poland, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Armenia, Burundi, Chile, Costa Rica, India, Peru, Republic of Korea, Swaziland.

42. The draft resolution, as orally revised, was adopted by 30 votes to 15, with 8 abstentions.

43. Mr. VEGA (Chile) said that while, on previous occasions, his delegation had voted in favour of the corresponding resolution, it had just abstained because the text did not guarantee the equal protection of all religions from discrimination. The draft resolution focused primarily on Islam and, while his Government condemned all forms of Islamophobia, the resolution should refer to the rights of people of all religions, as well as those of non-believers.

STATEMENT BY THE PRIME MINISTER OF ROMANIA

44. Mr. NASTASE (Romania), having expressed his Government's gratitude to the High Commissioner for her devoted and passionate work for human rights and its regrets that she had chosen not to extend her mandate, said that, under article 20 of his country's Constitution, international human rights instruments took precedence over domestic laws. Romania was, in fact, a party to all six of the major human rights treaties, but a legislative

framework was not in itself enough. His Government was therefore constantly endeavouring to address the human rights needs of its people and to enrich the institutional mechanisms needed to make those rights a reality. Steps were being taken to provide human rights education, to raise awareness and to change attitudes.

45. His Government fully supported the work of all the Commission's mechanisms and procedures. Various special rapporteurs and representatives had visited Romania, the most recent being the Special Rapporteur on adequate housing, who had paid a visit in January 2002. His Government had extended a standing invitation to the thematic procedures and was prepared to cooperate, whenever necessary, with other emissaries of the Commission.

46. In 2000, his Government had made a political commitment to address children's rights as a matter of priority. It was endeavouring to meet its obligations under the Convention on the Rights of the Child, keeping the relevant bodies informed of its national agenda and new initiatives in that field. It had prepared a national strategy for the protection of children in difficult situations, with the aim of providing services and increasing the participation of families and communities in the implementation of the rights of the child. The programme had been a very successful one, not only because it had received a significant amount of State funding, but because of the commendable commitment of the competent authorities, at both the local and central levels.

47. A national strategy to improve the situation of the Roma population had been introduced, aimed at preventing discrimination against the Roma minority and increasing its participation in economic, social and cultural life, in accordance with the principle of the equality of all Romanian citizens. The result of joint efforts by representatives of the Government and members of the Roma minority, the strategy contained a comprehensive plan of action touching on all sectors of relevance for that minority's well-being, in the economic, social and cultural spheres. Both of the national strategies reflected his Government's commitment to use all possible resources, in conjunction with the available international assistance, to resolve difficult situations and to implement the relevant human rights instruments.

48. Regrettably, Romania had recently become both a source country and a transit area for internationally trafficked women and girls. His Government was taking firm action to combat it, at both the national and regional levels, through inter alia the adoption of the National Action Plan against trafficking in persons. The Plan required tremendous legislative efforts and huge financial resources to strengthen the law-enforcement and other governmental agencies involved in the campaign. Romania had recently hosted an intergovernmental regional conference against human trafficking and illegal immigration, and a regional forum on cooperation in preventing and fighting against trafficking in human beings. His Government was currently working with the International Organization for Migration (IOM) on a regional workshop focusing on irregular movement in the Black Sea area. Efforts were also being made to continue the anti-trafficking actions undertaken during the Romanian chairmanship of the Organization for Security and Cooperation in Europe (OSCE). The Regional Centre for Combating Cross-border Crime, based in Bucharest, had successfully dismantled a regional trafficking network, as a result of Romanian-Bulgarian-Greek cooperation.

49. With the help of United Nations organs, Romania had made progress in combating discrimination. Parliament had recently passed a law on the prevention and penalization of all forms of discrimination, providing protection, inter alia, against discrimination on grounds of religion, ethnic origin or language. The National Council for Combating Discrimination had also been established.

50. The issue of national minorities could lead to violations of human rights if improperly handled, but civilized and constructive ways could be found to resolve even the most intricate of controversies. For example, the Hungarian Parliament had recently passed a law on Hungarians living in neighbouring countries. One of the provisions of the law stipulated the issuance of certificates of nationality for foreign citizens, giving bearers the right to preferential treatment and benefits in Hungary. His Government and others had seen the law as a potential source of discrimination and had questioned its compatibility with European standards. An exemplary public debate had ensued, leading to a memorandum of understanding between the two Governments which, inter alia, clarified the contents of the provisions of the law. He hoped that the Working Group on Minorities would examine the topic as a case study and that its conclusions would be beneficial to all interested countries.

51. There had been an overriding attempt by all participants in the session to assess the impact on the human rights agenda of the tragic events of 11 September 2001, although many questions remained unanswered. It was essential not to undermine the whole human rights system, built up so painstakingly over the decades, or to jeopardize the faith of peoples in human rights and the ongoing progress towards universality. The international community must take all the necessary steps against terrorism, but must also ensure that the price would not be paid in terms of human rights.

52. Romania had joined the international coalition against terrorism and was determined to contribute its utmost to the eradication of terrorism, at both the domestic and international levels. Using the war against terrorism as a pretext for human rights violations would serve only to satisfy the terrorists who had sought to destroy not only material achievements and human lives, but also symbols and values. The suggestion by the High Commissioner for Human Rights that a human rights dimension be added to the fight against terrorism merited careful attention.

53. The only way to reach the roots of hatred, violence and conflicts, including those which took the repugnant form of faceless terrorism, was through the promotion of human rights and democratic values. Experience had shown that, while conflicts continued to exist in civilized society, it was possible to find peaceful and more humane solutions, allowing ordinary people, who could no longer be used as mere cannon fodder, to express their views.

54. In 2000, his delegation had proposed to the Commission a code of democratic conduct that had become resolution 2000/47 on promoting and consolidating democracy. He urged the members of the Commission to continue to place the resolution on their governmental or civic agendas. He thanked the members of the Commission and observers who had supported the resolution and its related texts and said he welcomed the recent initiative, in the same vein, by the Peruvian delegation.

55. His Government supported the powerful political statements on Middle East issues made at the current session by the representative of Spain, on behalf of the European Union. It was deeply concerned at the daily loss of Palestinian and Israeli lives but was well aware that the Commission could not solve the numerous and intricate problems that had kept the conflict alive for so long. Nevertheless, he stressed that full respect for human rights in the region would have a great impact on the peace efforts.

56. He urged the Commission to maintain its integrity and its original mandate, to rationalize its work, to use its potential to consolidate the human rights machinery and to improve the human rights situation everywhere in the world. A greater common effort was needed to strengthen the resources and the institutional capability of the Office of the High Commissioner for Human Rights (OHCHR), so that it could face the burden of old and new mandates entrusted to it.

STATEMENT BY THE DEPUTY MINISTER FOR FOREIGN AFFAIRS OF AZERBAIJAN

57. Mr. KHALAFOV (Azerbaijan) said that, since the restoration of State Independence, vital political, economic and humanitarian changes had taken place in his country including measures to democratize society and promote human rights and fundamental freedoms. The country had achieved internal stability, held presidential, parliamentary and municipal elections and made irreversible some important political and economic reforms. The judicial and legal systems were also being reformed according to international and European standards to ensure an independent judiciary, the rule of law and effective legal proceedings guaranteeing every citizen the right to a fair trial.

58. Azerbaijan was a party to the major international human rights instruments and had also acceded to the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. In July 1998, his Government and the OHCHR had agreed on a programme of technical assistance to strengthen Azerbaijan's capacities and infrastructure for the protection of human rights. In addition, a programme of priority activities had been drawn up for the current year, based on proposals by his Government, including measures aimed at deepening democratization and strengthening the human dimension.

59. In a similar vein, human rights organizations had free access to prisoners to monitor their treatment in Azerbaijan and, in June 2000, his Government had signed an agreement with the International Committee of the Red Cross (ICRC) whereby its representatives were able to visit detention facilities. Azerbaijan had also become a member of the Council of Europe and had fulfilled many of the obligations involved such as ratifying the European Convention on Human Rights and its protocols and adopting a number of new legislative acts in the field of democratization and human rights.

60. Aggressive separatism, extremism and international terrorism represented a serious threat to peace, stability and security. When still part of the Soviet Union, Azerbaijan had faced a threat to its territorial integrity when Armenia had put forward groundless territorial claims and had undertaken unilateral action to annex parts of its territory. Apart from the fact that such

actions had been in violation of the constitutional provisions of the Soviet Union at the time, there had also been a broad consensus within the United Nations that the borders of the Union Republics should be drawn not on ethnic grounds but on the principle of uti possidetis juris, according to which the newly independent States of the former Soviet Union were recognized with the borders which had previously existed.

61. Allegations that the cause of the Armenian-Azerbaijani conflict was the Nagorny-Karabakh Armenian community's desire for self-determination also lacked a basis in international law, because it was a well-known fact that the rights of persons belonging to minorities could not serve as a basis for claims of secession or dismemberment of a State. Moreover, Security Council resolutions on the inviolability of international borders and the inadmissibility of using force to acquire territory had reaffirmed that there were no international legal grounds for Armenia's claim to Nagorny-Karabakh.

62. However, despite the unambiguous demands of the Security Council, which had been ignored by Armenia, about 20 per cent of the territory of Azerbaijan was still under occupation and, as a result of ethnic cleansing by Armenia, there were about 1 million refugees and displaced persons in Azerbaijan. There were also reports of gross violations of international humanitarian law by Armenia, with summary executions, torture and other forms of inhuman or degrading treatment against innocent Azerbaijanis. Unfortunately, his Government's efforts to reach a peaceful settlement had so far met with a negative response from Armenia.

63. Azerbaijan was a multi-ethnic and multi-confessional State and his Government firmly believed that a State should be a common home for all its resident population. The establishment of a "cleansed" State could not and should not be the solution to minority problems. The settlement of conflicts should be based primarily on the restoration of and strict respect for sovereignty, territorial integrity, inviolability of internationally recognized borders and the protection and promotion of human rights and fundamental freedoms.

64. Since the events of 11 September 2001, the struggle against terrorism had become a priority task for the whole international security system. His Government fully supported the efforts of the international community and unequivocally condemned terrorism in all its forms. Since the late1980s, when Armenia had advanced its territorial claims against Azerbaijan, Armenians had committed numerous acts of terrorism in Azerbaijan, acts which his Government had reported to the international community on many occasions.

65. Although Azerbaijan had made immense progress since the restoration of its independence, there were still problems to be resolved. His delegation had always been actively involved in the Commission's work and looked forward to fruitful cooperation and open dialogue in the future. It would be submitting a draft resolution on the issue of missing persons in connection with armed conflicts, and hoped that the initiative would receive broad support.

STATEMENT BY THE ASSISTANT DIRECTOR-GENERAL FOR CULTURE OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

66. Mr. BOUCHNAKI, (United Nations Educational, Scientific and Cultural Organization (UNESCO)), said that, on 2 November 2001, the General Conference of UNESCO had unanimously adopted a Universal Declaration on Cultural Diversity and he wished to highlight the human rights dimension thereof.

67. In the current era of globalization, there was much discussion of the risk of a uniform global culture which would cause the disappearance of cultural diversity throughout the world. Moreover, as the tragic events of 11 September 2001 had shown, globalization did not affect only the economic and financial sphere. It could be synonymous with the homogenization of educational, cultural, scientific and communicative activities and risked creating a uniformity of content and points of view to the detriment of creative diversity. Nevertheless, in a world where the non-acceptance of difference was expressed through excessive acts of religious fanaticism and social and racial prejudices, it was essential to be more receptive of diversity.

68. An analysis of existing international legal instruments had shown that the main concerns of the United Nations system and other international organizations in the cultural domain were the preservation of the heritage, the recognition of intellectual property rights and the establishment of dialogue and cooperation in the cultural world, the absolute priority being the need to preserve cultural diversity. In accordance with that line of thinking, the two main aims of the Declaration had been to preserve cultural diversity as a living, and renewable, treasure and to prevent segregation and fundamentalism from making difference a sacred fetish in the name of cultural traditions.

69. The Declaration emphasized the fact that each individual must recognize not only difference in its various forms but also the plurality of his or her own identity within societies that were themselves plural. The Declaration provided the international community with a broad instrument which described the diversity of the "common heritage of humanity". It emphasized the concept of cultural rights and offered a universal ethical framework whose principles would inspire national policies in a world where it had become urgent to stress the dignity of all cultures. In article 4 it reaffirmed that human rights were the guarantors of cultural diversity and, crucially, in article 5 it stated that "cultural rights are an integral part of human rights, which are universal, indivisible and interdependent".

70. To realize the principles set out in the Declaration, the General Conference of UNESCO had decided to adopt an Action Plan to ensure that they were respected. The plan would identify what was at stake in the debate by considering in depth questions relating to cultural diversity and, with the assistance of the member States and interested NGOs, would implement the main lines of the Action Plan that came within the competence of UNESCO.

71. UNESCO was currently elaborating a new human rights strategy which would regard cultural rights as human rights that it would give priority to promoting and protecting. The Universal Declaration on Cultural Diversity would undoubtedly serve as a springboard for promoting constructive pluralism based on respect and dialogue between cultures and civilizations.

INDIGENOUS ISSUES (agenda item 15) (E/CN.4/2002/96, 97 and Add.1, 98 and 133; E/CN.4/2002/13, 27, 58, 93, 151, 157 and 195; A/56/206; E/CN.4/Sub. 2/2001/17 and 21)

72. Mr. STAVENHAGEN, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, introducing his report (E/CN.4/2002/97), said that the situation regarding the human rights of indigenous people was far from satisfactory. Although some progress had been made in respect of international and national legislation on the recognition and protection of their rights, there were still many indigenous peoples which were not officially recognized or had their existence denied. In fact, definition and classification had, in some cases, even hindered the effective implementation of human rights standards for indigenous people and they were frequently still the victims of discrimination, racism, cultural denial and economic and social marginalization.

73. One crucial issue was the right to property and usufruct of land of indigenous communities and individuals which, for many of them, was a question of survival. Indigenous communities were increasingly using national and international human rights protection mechanisms to defend their claims, an example being the decision of the Inter-American Court of Human Rights regarding the property rights of the Awas Tigni community in Nicaragua. The adoption of legislation favourable to the recognition, protection and promotion of their human rights was slow, however, and they were often subject to discrimination in systems for the administration of justice.

74. Since submitting his report, he had had the opportunity of visiting Botswana and Mexico. In certain parts of both countries, indigenous populations had been subjected to involuntary displacement and resettlement. He called upon the Governments of Botswana and Mexico to continue negotiations on the matter in order to find a satisfactory solution to the problem. The same problems frequently occurred elsewhere and the States concerned should do their utmost to search for agreed solutions.

75. Indigenous peoples had great expectations concerning the United Nations draft declaration on the rights of indigenous peoples and were concerned that it had not yet been finalized. He therefore called on the members of the Commission to prioritize that topic and discuss the question of indigenous peoples' rights with an open mind and spirit of solidarity and generosity.

76. Mr. CHAVEZ, Chairperson-Rapporteur of the working group established in accordance with Commission resolution 1995/32, said that the sole objective of the group was to prepare a draft declaration based on the basis of the text contained in the annex to resolution 1994/45 of the Sub-Commission. The working group's report (E/CN.4/2002/98) contained five annexes describing the progress made to date with specific proposals (paras. 83-89) for consideration at its next session. Having thanked the Commission for the additional interpreting and translation services provided to the working group, he stated that even greater resources would be needed in the future. He looked forward to carrying out intensive preparatory work for the next session.

77. Mrs. DAES, Special Rapporteur on indigenous peoples and their relationship to land, introducing her final working paper (E/CN.4/Sub.2/2001/21), said that its main objective was to contribute effectively to the solution of problems related to rights to land, territories and resources facing a number of Governments and thousands of indigenous peoples across the world. Indigenous peoples in most parts of the world had been deprived of their lands and resources through many unjust processes including military force, unlawful settlements, forcible removal and resettlement, fraud and illegal expropriations by Governments. One of the most widespread contemporary problems was the failure of certain States to recognize the existence of indigenous land use, occupancy and ownership and to accord appropriate legal status and legal rights to protect that use, occupancy or ownership.

78. The historic decision of the Inter-American Court of Human Rights in 2001 (in the case of the Mayagna Sumo Awas Tigni Community v. Nicaragua), which had ruled that indigenous peoples had collective rights to the lands and natural resources they had traditionally used and occupied, established an international precedent clarifying that States had an obligation to recognize and protect the rights of indigenous peoples to their traditional lands, territories and resources.

79. Chapter 6 of the report contained a brief set of fundamental guiding principles regarding indigenous peoples' lands, territories and resources to facilitate the discussion and solution of many problems related to such a complex topic.

80. The Sub-Commission had unanimously decided to submit decision 2001/109 to the Commission for its consideration and she hoped that the requests contained in that decision would be approved.

81. Mr. DODSON (United Nations Voluntary Fund for Indigenous Populations), speaking on behalf of the Board of Trustees of the Fund, drew the Commission's attention to the Secretary-General's report (A/56/206) and the updated information contained in the High Commissioner's report (E/CN.4/2002/96). General Assembly resolution 56/140 had expanded the Fund's mandate by deciding that it should provide assistance to representatives of indigenous organizations and communities attending the sessions of the Permanent Forum on Indigenous Issues. The Board of Trustees had considered the more than 400 applications received and recommended the allocation of 25 travel grants.

82. At the fifteenth session of the Board, in April 2002, 232 new applications had been received for travel grants to attend the twentieth session of the Working Group on Indigenous Populations and 27 applications to attend the eighth session of the working group established in accordance with Commission resolution 1995/32. In view of the number of requests received and the Fund's expanded mandate, US$ 800,000 would be needed before the Board's next session in 2003.

83. General Assembly resolution 56/140 appealed to all Governments and organizations to consider substantially raising their contributions to the Fund. Commission resolution 2001/59 and Sub-Commission resolutions 2001/10 and 12 appealed for new contributions. He urged all regular and potential donors to give generously.

84. Speaking as Chairman of the Advisory Group of the United Nations Voluntary Fund for the International Decade of the World's Indigenous Peoples, he said that information on the Fund's financial situation could be found in the High Commissioners report (E/CN.4/2002/96). A more detailed report, mentioning all the beneficiaries and the amounts allocated, would be submitted to the Working Group on Indigenous Populations.

85. At its seventh session in April 2002, the Advisory Group had reviewed the situation of reporting on 116 project grants paid from 1998 to 2001 and had analysed over 100 applications received in 2002 from indigenous communities and organizations. In view of the remarkable increase in the number of applications, the Advisory Group had recommended that most of the available money be allocated to project grants. It had also recommended the funding of a few programmes under the Decade, to be implemented by OHCHR, including a workshop of indigenous peoples, to be held in South Africa in August-September 2002.

86. The Advisory Group had expressed its appreciation to the Governments of Chile, Colombia, Denmark, Estonia, Greece, Japan, New Zealand, Norway and Tunisia for making new contributions and to the Government of Cyprus for having made a pledge. New voluntary contributions, amounting to about US$ 1 million, would be required to enable the Fund to continue financing projects and programmes within the Decade in 2003. He assured the Commission that such contributions made a real difference to the lives and circumstances of many indigenous peoples.

87. Mr. BLACKMAN (Indian Council of South America) said that, from August to November 2001, the Swiss-based organization INCOMINDIOS had conducted an investigation into the issues raised by his organization at the fifty-third session of the Sub-Commission. Various reserves had been visited and many people interviewed. Evidence had been given of corruption and misinformation. Although offers of settlement had been accepted by the people concerned, such acceptances should be seen in the light of the corruption and misinformation, particularly considering how inadequate the settlements were to meet the people's needs for education, health care and development.

88. The indigenous nations of Canada had become increasingly aware of the erosion and extinction of their values. Canada had treated with them as sovereign nations but had passed legislation excluding them from the definition of "persons". In April 1999, the Human Rights Committee had noted the Canadian Government's acceptance that the situation of the aboriginal peoples remained the most pressing human rights issue facing Canadians. Nevertheless, the disease, unemployment, incarceration and suicide rates amongst the aboriginal peoples remained many times higher than those of the general population, while aboriginal land claims remained excluded from the general protection of human rights in the Canadian Charter of Rights and Freedoms.

89. Aboriginal peoples lived in third-world conditions, while multinational companies exploited their resources. For centuries they had been the keepers of the land. Without fair access to their land and resources, they stood to lose their identity as peoples. The Commission should send a special rapporteur and an independent team to see for itself what was happening.

90. Ms. OLGUIN RODRÍGUEZ (International Indian Treaty Council) said that her organization had been involved from the outset in the process of drafting the declaration on the rights of indigenous peoples. Every effort had been made to accommodate the views of experts, indigenous peoples and States. The resulting draft declaration represented the minimum standard required to ensure the full recognition of the rights of indigenous peoples around the world. It was extremely disappointing, therefore, that certain States continued to propose changes to the text which, if adopted, would seriously undermine and diminish its force, effectively subjugating indigenous peoples to the domestic laws of States, which were often blatantly discriminatory.

91. Her organization was also appalled that the Durban Declaration had failed to endorse the position taken at the previous two World Conferences against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which had affirmed the recognition of indigenous peoples without qualification or limitation. A few Northern States, led by the United Kingdom, had ensured that the Declaration adopted language qualifying the term "indigenous peoples" as not having the same significance under international law as in all other cases. The Durban Conference, rather than taking a principled stand, had left it to the working group established in accordance with Commission resolution 1995/32 to resolve the issue.

92. At the latest session of that working group, the Government of Guatemala had made a proposal whereby the application of the rights of indigenous peoples would be subject to those of so-called "third parties". That proposal had been applauded by a handful of States, some of which had shown themselves the most resistant to the recognition of indigenous peoples' rights under international law. Indigenous peoples' delegations had expressed their adamant opposition, since such peoples were already subject to domestic agendas and laws safeguarding the rights of third parties, in most cases at the direct expense of the indigenous peoples' rights to their traditional lands and resources.

93. She asked why overt racial discrimination directed against indigenous peoples was still tolerated in the international arena after their many years of participation in good faith and why the position that the most basic rights of indigenous peoples were secondary to the rights of all other parties was still seen as legitimate and defensible. She urged the Commission to support the position of the indigenous peoples and to approve the draft declaration without amendments or qualifications that would discriminate against them.

94. Mr. DEER (Indigenous World Association) said that the Chairperson of the Commission at its fifty-seventh session had promised that, at the current session, agenda item 15 would be allotted an entire day of its own. It was understandable, in the current circumstances, that such an allocation was no longer possible, but it was regrettably true that indigenous peoples had been accorded scant respect. It was to be hoped, therefore, that the Permanent Forum on Indigenous Issues would provide the opportunity for indigenous peoples' problems and difficulties to be examined.

95. The Durban Declaration contained what amounted to a racist provision directed against indigenous peoples, whose rights to self-determination were denied. He thus urged

Governments which supported self-determination for indigenous peoples to attend the next session of the Working Group on Indigenous Populations, where the issue would be discussed. It was essential that a satisfactory resolution should be reached.

96. Having commended the Special Rapporteur on indigenous peoples and their relationship to land for her final working paper (E/CN.4/Sub.2/2001/21), he said that land and resources were absolutely crucial to the nationhood of the indigenous peoples.

97. Mr. KSOR (Transnational Radical Party) said that the Degar people, known as the Montagnards, who lived in the central highlands of Viet Nam, had, for the past 25 years, been subjected to systematic human rights violations such as military operations, sterilizations, land confiscation, torture and religious repression. One of the oldest indigenous peoples in Asia was vanishing even as he spoke...

98. Ms. HOANG BICH LIEN (Viet Nam), speaking on a point of order, said that the speaker was illegally present in the room: he had been decorated by the United States Army and the Central Intelligence Agency (CIA) for fighting against the Vietnamese people. He was a terrorist.

99. Mr. REYES RODRÍGUEZ (Cuba), speaking on a point of order, said that the representative of Viet Nam had made an interesting point. While his delegation had no objection to the Transnational Radical Party in itself, a note verbale relating to it was in existence. Moreover, he shared the concern about the speaker in question. Economic and Social Council resolution 96/31 gave the Bureau the authority to prevent undesirables from speaking and serious consideration should be given to the views of the representative of Viet Nam.

100. The CHAIRPERSON said that the Transnational Radical Party was an NGO in general consultative status with the Economic and Social Council and Mr. Ksor was duly listed as one of its representatives. The Bureau would investigate the matter later but, in the meantime, he invited the representative of the Transnational Radical Party to continue his statement.

101. Mr. KSOR (Transnational Radical Party) said that recent violence by the Vietnamese security forces against Montagnard refugees and intimidation of UNHCR staff in Mondolkiri refugee camp in Cambodia, had led to the decision by UNHCR to cancel the repatriation agreement and the United States offer of asylum to 1,000 refugees. The Government of Viet Nam had closed off the central highlands to international scrutiny and the Government of Cambodia had publicly declared that it would force the refugees back into the hands of the Vietnamese security forces.

102. He welcomed the appeal by the European Union for the two Governments to comply with their international obligations and resume cooperation with UNHCR. The Montagnard people pleaded with the Commission to urge the Vietnamese Government to allow UNHCR to visit the repatriated refugees and to establish a permanent presence in the central highlands. The Cambodian border should be kept open for refugees fleeing Viet Nam and pressure should be brought on Viet Nam to end its 25 years of persecution of the Montagnards.

103. Ms. ERIKSEN (Saami Council) said that the draft declaration on the rights of indigenous peoples was a high priority for her organization, which represented the indigenous Saami people in Finland, Russia, Norway and Sweden. It was disappointed, therefore, to note that the working group had once again been unable to finalize any of the provisions of the draft declaration, which was to have been adopted before the end of the Decade. The main obstacle was clearly the issue of collective rights. Such rights were not, however, invented by the draft declaration: they already existed under international law, for example, in article 1 of each of the International Human Rights Covenants, International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the Convention on the Prevention and Punishment of the Crime of Genocide.

104. Indigenous cultures generally focused on the collective far more than did non-indigenous cultures. To be of relevance to the peoples and individuals it intended to protect, therefore, the declaration must include the collective aspect of human rights. The constant objections of a very few Governments to the text of the draft declaration on the basis that no such thing as collective human rights existed, were thus a matter of deep concern.

105. She expressed her organization's gratitude to all who had contributed to the establishment of the Permanent Forum on Indigenous Issues but urged that its funding be assured and that it be provided with its own secretariat. She also welcomed the appointment of the Special Rapporteur on indigenous peoples' human rights.

106. Mr. NAZARIAN (Armenia), speaking in exercise of the right of reply, said that, in his statement, the Deputy Minister for Foreign Affairs of Azerbaijan had made a number of unfounded accusations based on frivolous interpretations of Security Council resolutions concerning Nagorny-Karabakh, which did not refer to Armenia in any way. He recalled that, immediately after the collapse of the Soviet Union, the forces of Azerbaijan had threatened the Armenians of Nagorny-Karabakh with physical extermination through ethnic cleansing and aggression aimed at creating a situation of "no population, no problem". If the Deputy Minister had been properly briefed on the Nagorny-Karabakh negotiating process, he would have known that, following considerable progress, Azerbaijan had simply backtracked on agreements to bring about a solution. Lastly, he deplored the Deputy Minister's use of the tragic events of 11 September 2001 for narrow propaganda purposes, probably to cover up his Government's own record of harbouring terrorists.

The meeting rose at 1 p.m.